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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/896,138	06/29/2001	Jacques Van Den Dool	27224-703	5414

21971 7590 05/10/2004

WILSON SONSINI GOODRICH & ROSATI
650 PAGE MILL ROAD
PALO ALTO, CA 943041050

EXAMINER

HIRL, JOSEPH P

ART UNIT	PAPER NUMBER
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2121

DATE MAILED: 05/10/2004

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/896,138

Applicant(s)

DOOL, JACQUES VAN DEN

Examiner

Joseph P. Hirl

Art Unit

2121

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-20 are pending in this application.

2. The claims and only the claims form the metes and bounds of the invention.

"Office personnel are to give the claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. *In re Prater*, 415 F.2d, 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969)" (MPEP p 2100-8, c 2, I 45-48; p 2100-9, c 1, I 1-4). The Examiner has full latitude to interpret each claim in the broadest reasonable sense. Examiner will reference prior art using terminology familiar to one of ordinary skill in the art. Such an approach is broad in concept and can be either explicit or implicit in meaning.

3. Examiner's Opinion:

Para 2 above applies. The Examiner has full latitude to interpret each claim in the broadest reasonable sense. The owner of this application is requested by the Examiner to review this application together with applications 09/895,813 and 09/895,854 all of which have the same filing date, very similar disclosures but different inventors. Such review should confirm that the inventors of record are accurate.

Specification

4. Page 2, line 3: delete "an application" and insert –U. S. Patent Application No. 09/895,813--.

Page 2, line 5: delete "an application" and insert –U. S. Patent Application No. 09/895,854--.

These objections must be corrected.

Provisional Obviousness Double-Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1 and 11 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 3 of copending Application No. 09/895,813. Although the conflicting claims are not identical, they are not patentably distinct from each other because applying para 2 above, "direct entry" is a non distinguishing term having no effect on data received ... all evaluations received go to the computer. Further, the claim offers the exclusion of attributes.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 5 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 5 cites the term "ideal" which is a relative term and renders the claim indefinite. Claim 18 at step two cites "determining a cardinality matrix corresponding to the pairwise comparison matrices." If in step one of claim 18,

only one comparison matrix was determined, step two could not be performed. Continuing, from the specification at page 6, lines 2-3, a cardinality matrix is the equivalent of a pairwise comparison matrices. If step two is redundant to step one, at best the claim is confusing and perhaps not capable of being executed depending on the nature of step one. Conclusion, the claim at best is indefinite.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Stratmann (U.S. Patent 5,717,865, referred to as **Stratmann**).

Claims 1, 9, 11

Stratmann anticipates receiving, in a computer system, a set of alternative choices (**Stratmann**, c 2, l 40-41); receiving, in the computer system, a set of criteria by which the set of alternative choices may be evaluated (**Stratmann**, c 2, l 44-45); receiving, in the computer system via a data network coupled to the computer system, a set of assessments sent to the computer system by a set of individuals via the computer network, the assessments corresponding to respective criteria from the set of criteria

and comprising a set of weights that indicate importance of respective criteria from the set of criteria and a set of evaluations that correspond to possible attributes of the respective criteria (**Stratmann**, c 2, l 48-50); and based on the assessments, providing a relative analysis of the alternative choices (**Stratmann**, c 2, l 57-63); wherein the assessments include pairwise comparison combined with direct entry (**Stratmann**, c 2, l 35-63) Examiner's Note (EN): para 2 above applies; the numerical score for each alternative provides pairwise comparison between the value at alternative "n" and the value at alternative "n+1"; further, each alternative provides multiple choice since "n+1" alternatives will be determined and direct entry is manual entry).

Claims 2, 10

Stratmann anticipates the assessments include evaluation of alternatives using pairwise comparison combined with direct entry and multiple choice (**Stratmann**, c 2, l 35-63) Examiner's Note (EN): para 2 above applies; the numerical score for each alternative provides pairwise comparison between the value at alternative "n" and the value at alternative "n+1"; further, each alternative provides multiple choice since "n+1" alternatives will be determined).

Claims 3, 4

Stratmann anticipates determining a shift constant (**Stratmann**, c 2, l 57; EN: shift constant is a transfer function; multiplication of the expected satisfaction score by the probable reliability score yields a product called the probable expected satisfaction to facilitate direct comparison and allowing selection of the maximum value as the user's choice).

Claim 5

Stratmann anticipates wherein the determination of a shift constant comprises reference to a substantially ideal choice (**Stratmann**, c 2, l 57; EN: shift constant is a transfer function; multiplication of the expected satisfaction score by the probable reliability score yields a product called the probable expected satisfaction to facilitate direct comparison and allowing selection of the maximum value as the user's choice; ideal choice was not evaluated since this term renders the claim indefinite).

Claim 6

Stratmann anticipates performing a sensitivity analysis (**Stratmann**, c 4, l 61-63).

Claim 7

Stratmann anticipates direct entry comprises using a value function to determine grades (**Stratmann**, c 2, l 48; EN: such entry will effect ranking or grades).

Claim 8

Stratmann anticipates combining assessments of criteria to form analysis of respective criteria not directly assessed by the set of individuals (**Stratmann**, c 4, l 37-40; EN: reliability score facilitates integration of assessment criteria).

Claim 12

Stratmann anticipates the logic comprises software (**Stratmann**, c 2, l 57-61; EN: software is fundamentally logic statements).

Claim 13

Stratmann anticipates the logic comprises electronic hardware (**Stratmann**, c 2, l 57-61; EN: computers are made up of hardware and software and logic statements will be found in both).

Claim 14

Stratmann anticipates determining of weights using pairwise comparison combined with direct entry (**Stratmann**, c 2, l 35-67; EN: pairwise comparison is synonymous with alternative choice).

Claim 15

Stratmann anticipates evaluating alternatives using pairwise comparison combined with multiple choice (**Stratmann**, c 2, l 35-67; EN: the numerical score for each alternative provides pairwise comparison between the value at alternative "n" and the value at alternative "n+1" each alternative provides multiple choice since "n+1" alternatives will be determined).

Claim 16

Stratmann anticipates receiving, in a computer system, a set of alternative choices (**Stratmann**, c 2, l 40-41); receiving, in the computer system, a set of criteria by which the set of alternative choices may be evaluated (**Stratmann**, c 2, l 44-45); receiving, in the computer system via a data network coupled to the computer system, a set of assessments sent to the computer system by a set of individuals via the computer network, the assessments corresponding to respective criteria from the set of criteria and comprising a set of weights and a set of evaluations, and wherein the assessments

include pairwise comparison (**Stratmann**, c 2, l 48-50; EN: para 2 above applies; the numerical score for each alternative provides pairwise comparison between the value at alternative "n" and the value at alternative "n=1";); providing a solution that avoids iterative computations (**Stratmann**, c 2, l 36-63; EN: single pass); and based on the solution, providing a relative analysis of the alternative choices (**Stratmann**, c 2, l 36-63).

Claim 17

Stratmann anticipates determining an inverse matrix (**Stratmann**, c 5, l 7; EN: to one of ordinary skill in the art, a matrix consists of m lines or rows and n columns; m, n are real numbers generally and can be valued at 1; since a square matrix A multiplied by its inverse matrix A^{-1} is unity, a normalized process by definition will create an inverse matrix with m and n of the value 1).

Claim 19

Stratmann anticipates relative analysis of the alternative choices comprises determination of a measure of consistency of the assessments (**Stratmann**, c 2, l 36-63; EN: reliability achieves this measure of consistency).

Claim 20

Stratmann anticipates including leaving blank a respective entry in the pairwise comparison matrix to account for an assessment not provided by an individual providing fewer assessments than the total possible number of assessments available for the set of alternatives (**Stratmann**, c 4, l 61-63).

Conclusion

11. The prior art of record and not relied upon is considered pertinent to applicant's disclosure.

- Maxwell, U.S. Patent 6,195,643
- Ravid et al, U.S. Patent 6,622,137
- Geller et al, U.S. Patent 6,236,990
- D'Alessandro, U.S. Patent 6,556,974
- Saia et al, U.S. Pub 2003/0014379
- Kant et al, U.S. Pub 2002/0010667
- Froseth et al, U.S. Pub 2002/0004749
- Kauffman, U.S. Pub 2001/0032029
- Mikurak, U.S. 6,606,744
- Guheen et al, U.S. Pat 6,519,571

12. Claims 1-20 are rejected.

Correspondence Information

13. Any inquiry concerning this information or related to the subject disclosure should be directed to the Examiner, Joseph P. Hirl, whose telephone number is (703) 305-1668. The Examiner can be reached on Monday – Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Anthony Knight can be reached at (703) 308-3179.

Any response to this office action should be mailed to:

Commissioner of Patents and Trademarks,
Washington, D. C. 20231;

or faxed to:

(703) 746-7239 (for formal communications intended for entry);

or faxed to:

(703) 746-7290 (for informal or draft communications with notation of "Proposed" or "Draft" for the desk of the Examiner).

Hand-delivered responses should be brought to:

Receptionist, Crystal Park II
2121 Crystal Drive,
Arlington, Virginia.

A handwritten signature in black ink, appearing to read "Joseph P. Hirl", written over the printed name.

Joseph P. Hirl

May 4, 2004